

CHAPTER NO. 807

SENATE BILL NO. 2871

By Haynes, P. Springer, McNally

Substituted for: House Bill No. 2970

By Jackson, Scroggs

AN ACT To amend Tennessee Code Annotated, Title 71, Chapter 5, Part 1, relative to TennCare subrogation recovery.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Amend Tennessee Code Annotated, Section 71-5-117, by adding the following paragraph after existing paragraph (f):

(g) Before the entry of the judgment in a personal injury case the plaintiff's attorney shall contact the state (or any entity acting pursuant to subsection (f)), in order to determine if the state has a subrogation interest. The plaintiff's attorney shall then inform the court regarding the results of his contact with the state. After trial and at the time of the entry of the judgment in a case in which the state (or any entity acting pursuant to subsection (f)) has a subrogation interest under this section, it is the responsibility of the trial judge to calculate the amount of the subrogation interest and incorporate the court's findings concerning the subrogation interest in the final judgment. The gross amount of the subrogation interest shall be based upon the findings of the jury concerning medical expenses and evidence introduced after the trial about the total sum of monies paid by the state (or any entity acting pursuant to subsection (f)) for medical expenses for injuries arising from the incident that is the basis of the action. The gross amount of the subrogation interest shall be reduced as follows:

(1) To the extent that the plaintiff is partially at fault in the incident giving rise to the litigation, the subrogation interest is reduced by the percentage of fault assessed against the plaintiff;

(2) To the extent that the finder of fact allocated fault to a person who was immune from suit, the subrogation interest is reduced by the percentage of fault assessed against the immune person;

(3) To the extent that the finder of fact allocates fault to a governmental entity that has its liability limited under state law and the fault of the entity (when multiplied by the total dollar value of the damages found by the finder of fact) exceeds the amount of judgment that can be awarded against the entity, the subrogation interest is reduced proportionately by a percentage derived by dividing the uncollectable portion of the judgment against the governmental entity by the total damages awarded;

(4) To the extent that the finder of fact allocated fault to a person that the plaintiff did not sue, the subrogation interest is reduced by the percentage of fault assessed against the non-party.

(h) After these calculations are performed, the judge should further reduce the subrogation interest pro rata by the amount of reasonable attorneys' fees and litigation costs incurred by the plaintiff's in obtaining the recovery as required in subsection (c).

(i) The amount determined after performance of the calculations in subsections (g) and (h) is the net subrogation interest. If the plaintiff or plaintiff's counsel collects the judgment, each has the obligation to promptly remit the net subrogation interest (and attorneys' fees and costs to any counsel employed by the State or its assignee) as required by the final judgment. In the event that the plaintiff and his counsel collect only a portion of the final judgment, each has the obligation to promptly remit a pro rata share of the net subrogation interest (and attorneys' fees and costs to any counsel employed by the state or its assignee) as required by the final judgment. In the event that plaintiff or plaintiff's counsel later collect additional monies against the judgment, there is a continuing obligation on both of them to remit a pro rata share of the monies collected as required by the final judgment.

(j) In the event that the case between the plaintiff and the defendant is settled before trial but after a lawsuit is filed and the parties and the state or its assignee are unable to reach an agreement on the amount of the subrogation interest, the trial judge shall hold a hearing to determine the gross and net subrogation interests, taking into account the criteria listed in subsections (g) and (h) and the likelihood of collecting any judgment against parties determined to be at fault. Any aggrieved party may appeal from the court's decision.

(k) It is the intention of the legislature that (g) - (j) be used in lieu of application of the "made whole" doctrine for any recovery authorized under this section.


SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: May 17, 2000**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 24<sup>th</sup> day of May 2000**

  
DON SUNDQUIST, GOVERNOR